

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

50963

97503

FILE: B-184500

DATE: August 11, 1975

MATTER OF: Dietary Products Division of American Hospital  
Supply Corporation

## DIGEST:

Contracting officer should have been on constructive notice of possible error in low bid because of price disparity between low bid and Government estimate, and only other bid, and should have requested verification of bid; consequently, no contract was effected at contract price, but since increase in contract price cannot be based on factors not considered in the original bid, vendor may receive quantum valebant payment for goods furnished.

By letter of July 10, 1975, with enclosures, the Director, Supply Service, Department of Medicine and Surgery, Veterans Administration (VA), requested our decision as to the action to be taken concerning an error alleged by a vendor, Dietary Products Division of American Hospital Supply Corporation (Dietary), to have been made in its bid upon which Purchase Order No. 3254 was based.

The VA Hospital, Tuskegee, Alabama, requested bids for a double tank dishwashing machine with accessories by invitation No. 74-47. Bids were opened on March 22, 1974. Dietary submitted a bid of \$4,910 and the only other bidder, Goodwin Brothers, Inc., submitted a bid of \$6,383. The Government estimate for the dishwashing machine was \$6,000 but the contracting officer reported that he had no reason to suspect an error in Dietary's bid and did not request verification.

The mistake was not discovered until the VA Hospital contacted Dietary concerning 4 items on the purchase order that had not been delivered. Dietary then discovered that the quotation from its supplier, Hobart Food Equipment Systems (Hobart), did not include the 4 items and that consequently its bid was lower than it should have been by \$1,337.21, the cost of the 4 missing items. In support of its allegations, Dietary has submitted copies of its worksheets, the quotation from Hobart, and quotations from other suppliers for the missing items. The contracting officer believes that a bona fide mistake was made by Dietary and recommends that Dietary be allowed a price adjustment of this amount.

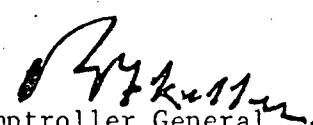
As a general rule, when a bid has been accepted the bidder is bound to perform and must bear the consequences of its unilateral mistake. Saligman v. United States, 56 F. Supp. 505 (E. D. Pa. 1944). However, our Office has held that no valid and binding contract is consummated where the contracting officer knew or should have known of the probability of error, but neglected to take proper steps to verify the bid. Matter of D.G. Machinery & Gage Co., B-181230, January 27, 1975.

The test is one of reasonableness, whether under the facts and circumstances of the particular case there were any factors which reasonably could have raised the presumption of error in the mind of the contracting officer. Wender Presses, Inc. v. United States, 343 F. 2d 961, 963 (Ct. Cl. 1965).

In the present case, the Government estimate and the only other bid were approximately 18 percent and 23 percent higher, respectively, than Dietary's bid. We feel that these price disparities should have caused the contracting officer to suspect that a mistake had been made. D.G. Machinery & Gage Co., B-181230, January 27, 1975. Consequently, since he did not request verification of the bid, no valid and binding contract was consummated at the award price. Chris Berg, Inc. v. United States, 426 F. 2d 314 (Ct. Cl. 1970).

Dietary's evidence of its intended bid includes price quotations for the items found missing in the original delivery. These quotations provide evidence that the bid intended could not have been the bid submitted but do not prove the exact amount of the intended bid. Our Office has held that evidence of after award costs may not be used to determine the intended bid because the bid price cannot be recalculated based upon factors not considered in submitting the original bid. 17 Comp. Gen. 575, 577 (1938); Matter of Ubique Ltd., B-180610, August 12, 1974.

The contracting officer has reported that the items originally missing are now being delivered. Since the contract price cannot be corrected because the intended bid cannot be proved, and since the VA Hospital will be enriched by receipt of the goods, Dietary may be paid on a quantum valebant basis for the reasonable value of the goods actually furnished, with payment not to exceed the claimed amount. 53 Comp. Gen. 368 (1973); Matter of Ace Window Cleaning Co., B-183380, June 23, 1975.

  
Deputy Comptroller General  
of the United States